

Estate Planning Report Template (for joint life cases only)

For (client) _____ based on the details provided _____ (date)

Estimated Liability

On the second death of _____ the liability to Inheritance Tax (and income tax if applicable) is estimated at € _____, based on current asset values.

Calculations - Tax Liability

The total value of the estate is € _____. The inheritance is split as follows

| Inheritance Tax - list of beneficiaries | | | | |
|---|---|-------------|----------------|---------------|
| Name | Group* | Inheritance | Taxable Amount | Tax liability |
| | Child / brother sister / etc / stranger | € | € | € |
| | Child / brother sister / etc / stranger | € | € | € |
| | Child / brother sister / etc / stranger | € | € | € |
| | Child / brother sister / etc / stranger | € | € | € |
| Totals | | € | € | € |

*Group thresholds available from 11th October 2016

Tax on ARF value inherited by the couples children over 21/beneficiaries:

Value of ARF/AMRF € _____ @ 30% = € _____

Each beneficiary's estimated Tax Liability is shown above,
giving a total Tax liability of € _____.

Personal Details and Existing Cover

The following sets out the relevant details relating to (the client) _____.

We understand that the total value of the estate is estimated at approximately € _____. The assets are as set out below.

| | |
|---------------------------------------|----------|
| Family Home | € |
| Other Property | € |
| Savings and Investments | € |
| Personal Property | € |
| Life Insurance | € |
| Pensions - pre-retirement | € |
| Pensions - post-retirement (ARF/AMRF) | € |
| Business Assets | € |
| Farm Assets | € |
| Total | € |

We have based the illustration on the following assumptions:

- We do not know if the clients have made a Will, however we understand that they intend leaving their estate to each other on death. On the death of the survivor, it is intended that their estate will be divided between the couple's beneficiaries as set out above.
- Their children / beneficiaries have not previously received any gift or inheritance from any source since 5th December 1991.
- Their children / beneficiaries have previously received gifts or inheritances from other sources since 5th December 1991 which have reduced their available Group___ tax free threshold.
- The family home (*will not*) be exempt from Inheritance Tax. Full details of the conditions for this exemption are available in the Appendices to this report.
- Agricultural relief (*will not*) apply in relation to the value of agricultural assets. Full details of the conditions for this relief are available in the Appendices to this report.
- Business relief (*will not*) apply in relation to the value of the business assets. Full details of the conditions for this relief are available in the Appendices to this report.
- The couples children (*will / will not*) all be over the age of 21 when they inherit the proceeds of their parents ARF / AMRF, thus this amount will be subject to (*income tax at a rate of 30% / inheritance tax at a rate of 33%*).
- The couples beneficiaries will be subject to income tax at a rate of 30% when they inherit the proceeds of the ARF / AMRF.
- The clients do not currently have any cover in place to provide for their beneficiaries estimated inheritance tax liability.

The Options

The following are some of the options that may be applicable and is dependent on the factual information provided.

The clients can take one of two options in dealing with the beneficiaries anticipated inheritance tax liability:

1. **Do nothing** - Inheritance tax is due and payable on the valuation date of the inheritance, which will normally be very shortly after death. Unpaid tax attracts interest which is not tax deductible.

Therefore if the clients make no advance provision for the beneficiaries' inheritance tax liability the beneficiaries may have to either:

- Sell part of their inheritance, or
- Borrow money to pay inheritance tax.

2. **Make advance provision** - The solution lies in the clients effecting a Section 72 Life Insurance Plan for a sum of €_____ for the benefit of their beneficiaries.

This illustration is based on the information you have given us and on our understanding of current legislation and Revenue practice. It is important that you provide all your financial details as information not included cannot be taken into account in providing advice.

Supporting information

Capital Acquisitions Tax (CAT)

Capital Acquisitions Tax (CAT) is a tax levied on the receipt of gifts and inheritances. CAT comprises two separate taxes - a Gift Tax payable on lifetime gifts and an Inheritance Tax payable on inheritances received on death. It is the person receiving the gift or inheritance who is liable to CAT and not the person or estate providing the benefit.

Basis of Charge

With effect from 1st December 1999, a charge to CAT will arise where either the disponer or the beneficiary is resident or ordinarily resident in the State at the date of the Gift or Inheritance. Where both the disponer and the beneficiary are not resident or ordinarily resident in Ireland, a charge to tax would only arise in relation to Irish property.

CAT Rates

For new gifts and inheritances received on or after 5th December 2001 tax is calculated according to the total of all gifts and inheritances received from all sources since 5th December, 1991. The following CAT Tax Table currently applies:

| Tax Rate | |
|-----------------|-----|
| Group Threshold | NIL |
| Balance | 33% |

Source CAT Consolidation Act 2003 (as updated by subsequent Finance Acts).

The Group threshold amounts vary depending on the relationship between the beneficiary and the disponer, i.e. the person providing the gift or inheritance.

| | |
|------------------|---|
| Group 1 €310,000 | Where the person receiving the property is a child of the disponer or, a child of the civil partner of the disponer, or, a minor child of a deceased child of the disponer or, a minor child of a deceased child of the civil partner of the disponer, or, a minor child of the civil partner of a deceased child of the disponer, or, a minor child of the civil partner of a deceased child of the civil partner of the disponer. |
| Group 2 €32,500 | Where the person receiving the property is a lineal ancestor of the disponer, a descendant of the disponer, a brother/sister of the disponer, or, a child of a brother/sister of the disponer or, a child of a civil partner of a brother or sister of the disponer. |
| Group 3 €16,250 | All other cases |

The threshold amounts are those applying with effect from midnight on 11th October 2016.

Source CAT Consolidation Act 2003 (as updated by subsequent Finance Acts).

Aggregation

Under the current aggregation rules all benefits from Group 1 will be added together with an overall threshold of **€310,000**. Benefits from Group 2 members (brother, sister, grandparent etc) will be added together for the purpose of the **€32,500** threshold, and benefits from Group 3 members (strangers) for the purpose of the **€16,250** threshold. So in effect a beneficiary can potentially receive up to **€358,750** tax-free if the benefits come through different "groups".

Relief's and Exemptions

Certain reliefs and exemptions apply to certain types of assets. These have been introduced over the years primarily to encourage private enterprise and to avoid the forced sale of a family farm, business or the family home in certain circumstances.

The main relief's and exemptions are:

Spouse / Civil Partner – gifts or inheritances received by one spouse / civil partner from the other are totally exempt from CAT.

Agricultural Relief –the value of farmland, buildings and stock can be reduced by 90% where the beneficiary is a qualifying farmer and holds the property for a minimum of 6 years.

Business Relief –provides a similar reduction of 90% in the value of certain businesses or private companies, where both the business and the beneficiary meet the qualifying conditions.

Family Home - exemption from Gift and Inheritance Tax may be available on the value of certain *dwelling*s where both the donor and beneficiary satisfy certain conditions. The donor has to be living in the property at the date of his or her death and the beneficiaries must meet all of the following conditions:

- Have occupied the house as his sole or main dwelling for three years prior to the date of the gift or inheritance,
- At the date of the gift or inheritance does not hold an interest in any other dwelling house either in Ireland or outside of the state,
- Continue to occupy the house as his sole or main residence for 6 years after the date of the gift of inheritance.

Life Assurance Relief – the proceeds of life assurance policies, where the plan was effected specifically for the payment of Inheritance Tax or the tax payable on the value of an ARF inherited by a child over the age of 21, will not be subject to Inheritance Tax – provided the money is actually used to pay the relevant tax bills.

All reliefs are highly qualified; details of the conditions that apply in relation to reliefs are contained in the Appendices.

Making a Will

A valid Will, reflecting your current wishes, is a vital part of the estate planning process. If the provisions of your Will are not in line with the intentions outlined in the information given, this report may not be appropriate. If you die without leaving a Will your estate will be divided in accordance with the Succession Act (*see Appendix I*).

You should talk to a solicitor if you do not have a valid Will or if your Will needs to be updated.

While our recommendation is based on our understanding of current legislation and Revenue practice we recommend you seek professional legal and tax advice to ensure that any arrangement you decide to put in place is appropriate to your individual circumstances.

Appendix I - Succession Act

When a person dies all their property devolves to their “**personal representatives**” to transfer to the individual’s successors. The way property is transferred will depend on whether or not the deceased had made a **Will**. If there is a valid Will the personal representatives “**the executors**” distribute the assets in accordance with the terms of the Will.

If there is no Will the individual is said to have died “**intestate**” and the property is distributed by the personal representatives “**administrators**” in accordance with the provisions of the **Succession Act 1965**.

The Succession Act provides a legal spouse, a registered civil partner and children will certain minimum legal entitlements as follows:

NO Will - where a person dies “intestate”

| | |
|---|--|
| Spouse or civil partner and no children : | Spouse or civil partner entitled to full estate. |
| Spouse or civil partner and children : | Spouse or civil partner gets 2/3rds Civil partners entitlement is subject to the financial needs of any children being met 1/3 equally between children. |
| No spouse or civil partner but children: | Estate is divided equally between children. |
| No spouse or civil partner and no children: | Parent(s) if living, otherwise brothers/sisters |

Where an individual dies “intestate” leaving neither spouse, civil partner nor children, his assets will pass to parents, if his parents are deceased to his brothers and sisters, otherwise to wider family - the Act provides a hierarchical list.

Will -a “testate” death (Entitlement regardless of provisions of will)

| | |
|--|--|
| Spouse or civil partner and no children: | Spouse or civil partner entitled to 1/2 of estate. |
| Spouse or civil partner and children: | Spouse or civil partner entitled to 1/3 of estate. Civil partners entitlement is subject to the financial needs of any children being met as directed by the courts |

An individual can make a Will any way he wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the Will provides.

Children do not have a right to a particular share of the estate under a Will. However, Section 117 of the Act gives a child the right to apply to the Court for a share of the estate under a Will if in the Court’s opinion “*the testator has failed in his moral duty to make proper provision for the child in accordance with his means.*”

It is worth mentioning that while this right of the child to apply to the Courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact of the amount of the estate to which a registered civil partner is entitled.

Appendix II - Family Home Exemption

The value of a "dwelling house" taken on or after 1st December 1999 may be exempt from Inheritance Tax, in the hands of the beneficiary provided certain qualifying conditions are met.

"Dwelling House", for the purpose of this exemption, means a building or part of a building with up to one acre of land that was used or was suitable for use as a dwelling.

To obtain the exemption from inheritance tax **the disponent** and **the beneficiary** must meet certain conditions.

The **disponent** must have occupied the "relevant dwelling house" as his or her only main residence at the date of his or her death, subject to limited exceptions as outlined below.

The **beneficiary** must satisfy all of the following conditions:

- a) He or she must have occupied the "relevant dwelling house" as his or her only or main residence continuously throughout the 3 year period immediately prior to the date of the inheritance,
- b) He or she must not be beneficially entitled to any interest in any other dwelling house at the date of the inheritance, this includes the inheritance of a second property from the disponent,
- c) He or she must continue to both own and occupy the dwelling house as his or her only or main residence throughout the period of 6 years following the date of the inheritance*.

Where the dwelling house directly or indirectly replaced other property owned by the disponent, the 3 year period in condition a) will be satisfied if the beneficiary occupied both properties for a total of 3 of the 4 years prior to the date of the inheritance.

In the case of **both the disponent and the beneficiary** if either party ceased to occupy the dwelling house as a result of his or her mental or physical infirmity, this period will be taken into account for the purposes of the 3 / 6 year rule.

** the exemption will not be withdrawn where condition c) above is breached in the following circumstances where the beneficiary:*

- i. *Does not occupy the house as a result of his or her mental or physical infirmity. This infirmity must be certified by a registered medical practitioner, or*
- ii. *does not occupy the house as a result of working abroad by consequence of any condition imposed by his or her employer requiring the beneficiary to work abroad to carry out the duties of his or her employment, or*
- iii. *was aged 65 at the date of the inheritance, or*
- iv. *replaces the house and reinvests the proceeds in another dwelling house, and occupies both properties for at least 6 years of the 7 years from the date of the inheritance.*

PLEASE NOTE

As this report is dealing with your beneficiaries liability to Inheritance Tax, the information above only deals with the conditions for relief from inheritance tax. The conditions to avail of Dwelling House Exemption in respect of gifts are very different. They can be obtained from your Adviser.

Appendix III - Business Relief

For gifts and inheritances taken on or after 23rd January 1997 the taxable value of “relevant business” property is reduced by 90%.

Company Shares:

The definition of “relevant business property” includes unquoted shares and securities of Irish incorporated companies subject to certain conditions.

The company

The company’s business must not consist wholly or mainly of any of the following excluded activities - *dealing in currencies, securities, stocks or shares, land or buildings, or making or holding of investments.*

The beneficiary

For the relief to apply the beneficiary must meet one of the following ownership/control tests:

- i) The shares themselves or together with other shares in the company held in the absolute beneficial ownership of the beneficiary, give the beneficiary control of 25% of the voting power over all matters relating to the company,
- or**
- ii) the beneficiary controls the company or the company is controlled by the beneficiary and his relatives*,
- or**
- iii) the beneficiary holds at least 10% of the issued capital of the company and has worked full time in the company for 5 years prior to the gift/inheritance.

** Relatives of a person include his spouse, civil partner, children, mother, father, aunt, uncle and any children, grandchildren of any the foregoing. In addition all spouses of relatives are included for the purposes of determining control.*

Control includes - having over 50% of the voting power, or owning more than 50% of the shares or being in a position to control the board of directors.

Business Relief - unincorporated business.

Relevant business property also includes property consisting of a business (Sole trader) or an interest in a business (share in a partnership). A business which is wholly or mainly concerned with *dealing in land, shares, securities or currencies or the making or holding of investments is excluded.*

The relief will apply where ***the business or part of the business is transferred*** and not simply where an asset that had been part of the business is subject to CAT.

General

So far we have concentrated on the conditions that apply to the business and the beneficiary in order to qualify for Business Relief. There are some other general conditions worth noting:

Disponer

The property must have been owned by the disponer for a period of 5 years prior to a gift or 2 years in the case of an inheritance.

Clawback of Relief

If within 6 years of the gift or the inheritance of business property:

- the business ceases to qualify, or
- the property is sold or compulsorily acquired and not replaced within one year with other business property

the entire relief will be clawed back.

Appendix IV - Agricultural Relief

This is a special relief given in respect of certain agricultural property taken by a "farmer". The relief is given by reducing the market value of the agricultural property by 90% for gifts and inheritances taken on or after 23rd January 1997.

The market value of the agricultural property as so reduced is then termed "agricultural value" in the Act and is substituted for market value in the calculation of tax.

There are certain conditions attaching to this relief:

- The relief only applies to "agricultural property" which is defined as "agricultural land, pasture and woodlands situated within a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with lands occupied therewith) as are of a character appropriate to the property." The relief also applies to stock and farm machinery. **With effect from 25th December 2017** land under solar panels, where the solar panels are not installed on more than half of the land comprised in the gift or inheritance, will also qualify as 'agricultural property'.
- Any milk quota attaching to lands will also qualify for reduction as part of the market value of the lands.
- The relief only applies to agricultural property acquired by an individual, who after taking the agricultural gift or inheritance not less than 80% of his gross assets are represented by the value of agricultural property, including livestock, bloodstock, farm machinery and land under solar panels where the acreage of such land does not exceed more than 50% of the land comprised in the gift or inheritance. A donee is allowed to offset borrowings for the purchase, repair or improvement of on an off farm principal private residence against the value of the property for the purpose of the 80% test.
- For gifts or inheritances received after 1st January 2015 the beneficiary must have
 - a. a relevant agricultural qualification or attain such a qualification within four years of the date of the gift or inheritance, and must farm the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit, **or**
 - b. the beneficiary must spend not less than 50% of their normal working time farming the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit . Normal working time approximates to 40 hours per week.

Where the beneficiary leases the agricultural property the individual to whom the property is leased must satisfy either condition a. or b. above.

The relief is withdrawn in certain circumstances:

If within 6 years of the 'valuation date' the beneficiary ceases to qualify as a farmer as outlined and does not lease the land to a lessee who will farm the land for the remainder of the 6 year period.

Or if within six years after the date of the gift or the inheritance lands are sold or compulsorily acquired in the lifetime of the donee or successor, and the agricultural property is not replaced within a year following a sale, or within 6 years following a compulsory acquisition where the land was compulsorily acquired on or after 25th March 2002.

If the gift or inheritance consists of development land and is disposed of in the period commencing 6 years after the date of the gift / inheritance and ending 10 years after the date there will be a partial claw back of the relief.